

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #6	CCRB Case #: 201904508	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/24/2019 2:20 AM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 11/24/2020	EO SOL 7/11/2021	
Date/Time CV Reported Fri, 05/24/2019 2:55 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/24/2019 2:55 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POF Merita Hoxha	11713	955988	042 PCT
2. POM Dennis Vargas	07471	957245	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POF Merita Hoxha	Abuse of Authority: Police Officer Merita Hoxha stopped the vehicle in which § 87(2)(b) was an occupant.	A . § 87(2)(g)
B . POM Dennis Vargas	Abuse of Authority: Police Officer Dennis Vargas stopped the vehicle in which § 87(2)(b) was an occupant.	B . § 87(2)(g)
C . POF Merita Hoxha	Abuse of Authority: Police Officer Merita Hoxha frisked § 87(2)(b)	C . § 87(2)(g)
D . POF Merita Hoxha	Abuse of Authority: Police Officer Merita Hoxha searched the vehicle in which § 87(2)(b) was an occupant.	D . § 87(2)(g)
E . POF Merita Hoxha	Abuse of Authority: Police Officer Merita Hoxha failed to provide § 87(2)(b) with a business card.	E . § 87(2)(g)
F . POM Dennis Vargas	Abuse of Authority: An officer failed to provide § 87(2)(b) with a business card.	F . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
L . POF Merita Hoxha	Other: There is evidence suggesting Police Officer Merita Hoxha provided a false official statement in violation of PG 203-08.	L . § 87(2)(g)
M . POM Dennis Vargas	Other: There is evidence suggesting Police Officer Dennis Vargas provided a false official statement in violation of PG 203-08.	M . § 87(2)(g)

Case Summary

On May 24, 2019, § 87(2)(b) submitted this complaint via the CCRB website.

On May 24, 2019, at approximately 2:20 a.m., § 87(2)(b) drove alone in the vicinity of § 87(2)(b) in the Bronx when he was pulled over by PO Merita Hoxha and PO Dennis Vargas of the 42nd Precinct (**Allegations A and B: Abuse of Authority: § 87(2)(g)** PO Hoxha ordered § 87(2)(b) out of the vehicle and frisked him (**Allegation C: Abuse of Authority: § 87(2)(g)** PO Hoxha searched throughout § 87(2)(b)'s vehicle, under the hood, and in the trunk (**Allegation D: Abuse of Authority: § 87(2)(g)** PO Hoxha returned § 87(2)(b)'s identification. She and PO Vargas left without further incident. § 87(2)(b) was not arrested or summonsed.

PO Hoxha and PO Vargas failed to provide § 87(2)(b) with RTKA business cards (**Allegations E and F: Abuse of Authority: § 87(2)(g) § 87(4-b), § 87(2)(g)**

There is evidence suggesting that both PO Hoxha and PO Vargas provided false official statements to the CCRB (**Allegations L and M: § 87(2)(g)**

Surveillance footage was obtained from § 87(2)(b) at § 87(2)(b) (BR 01). § 87(2)(b) recorded a portion of the incident on his cell phone (BR 02).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Merita Hoxha stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Dennis Vargas stopped the vehicle in which § 87(2)(b) was an occupant.

Surveillance footage from the § 87(2)(b) at § 87(2)(b) (BR 05) showed that at 2:17 a.m. on May 24, 2019, two officers stopped § 87(2)(b)'s vehicle at § 87(2)(b) PO Hoxha opened the passenger door and walked to the passenger side of § 87(2)(b)'s vehicle. An officer fitting PO Vargas' description exited the driver side of the vehicle and walked to the passenger side of § 87(2)(b)'s vehicle.

Cell phone footage provided by § 87(2)(b) (BR 02) showed PO Hoxha hand him his driver license at the conclusion of their interaction. § 87(2)(b) asked why he had been stopped. PO Hoxha replied, "I already explain [sic] it to you." § 87(2)(b) replied that he would see her in court.

The investigation synchronized the surveillance footage and cell phone video (BR 04) to demonstrate that they depicted the same incident. A reference document (BR 06) directs the viewer to the second officer's silhouette.

An IAB audit of PO Vargas' cell phone (BR 07) showed that on May 24, 2019, at 2:20 a.m., he conducted a Domain Awareness System (DAS) search for § 87(2)(b) Brumfield." According to IAB, no other NYPD officer searched for § 87(2)(b) on this date.

§ 87(2)(b) alleged that on May 24, 2019, at 2:20 a.m., PO Hoxha and PO Vargas pulled him over at § 87(2)(b) in the Bronx. § 87(2)(b) drove alone and denied making any vehicle infractions His description of PO Hoxha's partner closely matched that of PO Vargas.

During the stop, he watched PO Vargas enter the name § 87(2)(b) § 87(2)(b) ' onto either a small tablet or a large cellphone. PO Vargas did not enter the § 87(2)(b) because it was not on his driver license.

PO Hoxha testified that she was assigned to work with PO Vargas. However, before this incident she drove alone from the 42nd Precinct stationhouse to the 41st Precinct stationhouse because her BWC did not dock correctly and the 41st Precinct had a desk to repair the issue. PO Vargas did not travel with her. PO Hoxha did not remember where PO Vargas was. While PO Hoxha drove to the 41st Precinct stationhouse, she noticed a vehicle – a sedan – that committed several unspecified vehicle infractions. PO Hoxha did not know what the vehicle did, where the alleged violations happened, or the what the violations were. At § 87(2)(b) in the Bronx, PO Hoxha pulled the vehicle over by activating her lights and sirens. She did not make a radio notification indicating that she conducted a vehicle stop. At some point during the stop, an additional unmarked vehicle from another precinct joined her and an unknown plainclothes white male officer stood next to her vehicle as the stop was conducted. PO Hoxha believed the officer accompanied her because she was alone. She did not remember anything else that happened during the vehicle stop, except that at the conclusion of the stop, the operator, § 87(2)(b) stepped out of the vehicle and mumbled something she could not hear. She did not remember conducting any database searches of § 87(2)(b)'s license. PO Hoxha was presented with both the cell phone video and surveillance footage of this incident. She testified that she could not see anything in the video because the police vehicle lights impaired her view. She denied that the video showed her with another officer. PO Hoxha was presented with § 87(2)(b)'s cell phone video (BR 02). She acknowledged that it depicted her, but it did not refresh her recollection of the incident.

PO Vargas denied being present during this incident. PO Vargas was presented with the IAB audit that showed his search for § 87(2)(b) name and date of birth at 2:20 a.m. on May 24, 2019. He did not have any recollection of conducting this search.

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

The Command Log for May 23, 2019 (BR 11) and May 24, 2019 (BR 12) did not have any entries regarding BWC issues or malfunctions. It did not indicate that PO Hoxha went to the 41st Precinct stationhouse, or that PO Vargas and PO Hoxha separated at any point. At 1:02 a.m. the desk officer, Lieutenant Mo Tsang of the 42nd Precinct, wrote that all BWCs were secured and accounted for.

The 42nd Precinct could not locate an Unmarked Vehicle Utilization Log for the vehicle PO Hoxha and PO Vargas used on this date (BR 13).

The surveillance footage from § 87(2)(b) showed that PO Hoxha and another officer conducted this stop from the same police vehicle. No additional officers or vehicles responded to this incident. Based on the evidence that PO Vargas was present – from § 87(2)(b)'s testimony, the warrant audit, and the surveillance footage, to the lack of evidence that he was anywhere else, the investigation determined that he and PO Hoxha conducted this vehicle stop together.

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Merita Hoxha frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Merita Hoxha searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) alleged that after he provided PO Hoxha with his license and registration, she spoke to PO Vargas and then asked § 87(2)(b) to step out of his vehicle. § 87(2)(b) asked why, and she replied that she smelled marijuana. He told her there was no way that she smelled marijuana because he did not smoke and no one else smoked in the car. He stepped out of the vehicle. He lifted his arms and PO Hoxha patted around his waistband. While PO Vargas watched, PO Hoxha touched the outside of each of the pockets on his jeans. She did not ask if he had a weapon or any marijuana. When the ‘pat-down’ was completed she instructed him to walk to the rear of the vehicle. § 87(2)(b) stood next to PO Vargas, who entered § 87(2)(b) s name into either a large cell phone or a small tablet. § 87(2)(b) complained that PO Hoxha lied when she said the car smelled like marijuana, and that the search was illegal. PO Vargas replied, “It’s not illegal. We have probable cause when we smell weed.” PO Hoxha searched through § 87(2)(b) s vehicle. She looked under the front driver seat with a flashlight, then walked to the front of the vehicle. She opened the hood and looked under the hood for less than a minute. She walked to the passenger side of the vehicle and looked inside. She went to the back of the vehicle, opened the trunk, and shone her flashlight inside. She did not take anything from the vehicle. She looked at PO Vargas, who nodded his head, and she told § 87(2)(b) to have a seat in his vehicle.

PO Hoxha did not remember whether she frisked § 87(2)(b) or if she had any reason to frisk him. She did not express a suspicion that § 87(2)(b) was armed and dangerous. She did not remember if she searched § 87(2)(b) s vehicle. She did not remember if there was any reason to search § 87(2)(b) s vehicle. She did not remember smelling marijuana.

When PO Hoxha was presented with the surveillance footage of this incident, she denied seeing an officer open the hood of the vehicle and look inside with a flashlight.

As stated above, PO Vargas denied being present during this incident.

§ 87(2)(b) s cell phone video (BR 02) showed that PO Hoxha held a flashlight during this vehicle stop.

The surveillance footage of this incident showed two officers stop and search § 87(2)(b) s vehicle. At 3:18 minutes into the stop, an officer with a flashlight walked from the driver door, to the passenger door, back to the driver door, then to the front of the vehicle. That officer opened the hood of the vehicle and looked inside with a flashlight.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In People v. Chestnut, 36 N.Y.2d 971 (1975), the court ruled that when officers stop a moving vehicle and detect the odor of marijuana emanating from that vehicle, they may conduct a warrantless search of that vehicle.

Officers may frisk individuals and search individuals' vehicles under specific circumstances laid out by the courts. § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Merita Hoxha failed to provide § 87(2)(b) with a business card.

Allegation (F) Abuse of Authority: Police Officer Dennis Vargas failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) alleged that PO Hoxha frisked him and searched his vehicle. As PO Hoxha searched his vehicle, PO Vargas questioned him about whether or not he had a New York State driver license. PO Vargas entered § 87(2)(b)'s name into a large cell phone or a large tablet. PO Vargas asked, "Why do I see a New York history?" § 87(2)(b) replied that he had a New York State driver license prior to obtaining his Delaware driver license. § 87(2)(b) complained that the search of his vehicle was illegal. PO Vargas replied, "It's not illegal. We have probable cause when we smell weed." At the conclusion of this incident, § 87(2)(b) did not receive a RTKA business card from either PO Hoxha or PO Vargas.

PO Hoxha testified that she was equipped with a RTKA business card during the incident. She normally provided one during every vehicle stop, when she would give a driver back their license and registration. She believed that she provided a RTKA card during this incident but did not specifically remember doing so.

As stated above, the investigation determined that PO Hoxha searched § 87(2)(b)'s vehicle.

§ 87(2)(b)'s cell phone video shows PO Hoxha return his driver license (BR 02). The footage does not show her provide § 87(2)(b) with a RTKA card. the video further demonstrate that PO Hoxha did not provide § 87(2)(b) with a RTKA card (BR 14).

§ 87(4-b), § 87(2)(g)

According to New York Administrative Code Law 14-174 (b), the meaning of the term 'law enforcement activity' includes: noncustodial questioning of an individual suspected of criminal activity, investigatory questioning of a witness to a crime, frisking an individual, and searching a vehicle. During a law enforcement activity, an officer shall offer a business card at the conclusion of such activity that does not result in an arrest or summons (BR 15).

§ 87(2)(g) [Redacted]
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§ 87(4-b), § 87(2)(g) [Redacted]
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§ 87(2)(g), § 87(4-b) [Redacted]
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§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation L – Other Misconduct: There is evidence that Police Officer Merita Hoxha provided a false official statement in violation of Patrol Guide 203-08.

Allegation M – Other Misconduct: There is evidence that Police Officer Dennis Vargas provided a false official statement in violation of Patrol Guide 203-08.

The CCRB found evidence suggesting that PO Hoxha and PO Vargas provided false official statements when they testified that they were not together during this incident.

As stated above, PO Hoxha stated that PO Vargas was not with her during this incident because she went to have her BWC repaired at the 41st Precinct. A second unknown officer in an unmarked vehicle joined her and stood by her vehicle to provide backup. She did not provide an account of her interactions with § 87(2)(b).

Surveillance footage from the § 87(2)(b) at § 87(2)(b) (BR 01) showed that at 2:17 a.m. on May 24, 2019, two officers stopped § 87(2)(b)'s vehicle at § 87(2)(b) (BR 05). PO Hoxha opened the passenger door and walked to the passenger side of § 87(2)(b)'s vehicle. An officer fitting PO Vargas' description and identified via investigation as PO Vargas, exited the driver side of the vehicle and walked to the passenger side of § 87(2)(b)'s vehicle.

Cell phone footage provided by § 87(2)(b) (BR 02) showed PO Hoxha hand § 87(2)(b) back his driver license at the conclusion of their interaction. § 87(2)(b) asked

why he had been stopped. PO Hoxha replied, "I already explain [sic] it to you." § 87(2)(b) replied that he would see her in court.

The investigation synchronized the surveillance footage and cell phone video (BR 04) to demonstrate that they depicted the same incident. A reference document (BR 06) directs the viewer to the second officer's silhouette.

An IAB audit of PO Vargas' cell phone (BR 07) showed that on May 24, 2019, at 2:20 a.m., he conducted a Domain Awareness System (DAS) search for § 87(2)(b) § 87(2)(b). According to IAB, no other NYPD officer searched for § 87(2)(b) on this date.

§ 87(2)(b) testified that during this incident, an officer fitting PO Vargas' description entered the name § 87(2)(b) Brumfield' onto either a small tablet or a large cellphone. PO Vargas did not enter the § 87(2)(b) because it was not on his driver license.

PO Vargas initially stated that he had no recollection of this incident. In his second interview, he corroborated PO Hoxha's account of the incident, in which he was not present. He believed that when PO Hoxha went to the 41st Precinct stationhouse because there was an issue with her BWC, he chose to stay at the 42nd Precinct Stationhouse. He did not remember what he did at the stationhouse. He did not have any memo book entries indicating that he was at the stationhouse. He normally did not sign in or out of the stationhouse because he entered through the side entrance. He did not know if PO Hoxha notified a sergeant when she went to the 41st Precinct. If he had gone to the 41st Precinct, he would have notified Sgt. Duerr in advance. PO Vargas was presented with both the surveillance footage from § 87(2)(b) and the cell phone footage provided by § 87(2)(b). Neither of these videos refreshed his recollection. PO Vargas was presented with a NYPD issued cell phone Warrant Audit that showed his search for § 87(2)(b) § 87(2)(b) name and date of birth at 2:20 a.m. on May 24, 2019. PO Vargas did not have any recollection of conducting this search. PO Vargas explained that all members of the team had access to each other's Department issued phones. He explained that all members of his Anti-Crime team had access to each other officer's phones, which could be accessed via password or fingerprint. All other officers on his Anti-Crime team could have been the search because he had shared his password with them. PO Vargas stated that he did not take his phone with him when he went home at the end of the day and may have left it in PO Hoxha's car.

Sgt Duerr testified that he inspected BWCs at the precinct stationhouse every day at the beginning of his tour. He was not aware of any BWC issues on this date. He added that if an officer were to leave the confines of the 42nd Precinct while on duty, there should have been an entry in the Command Log to indicate what they were doing. At 7:00 p.m. on May 23, 2019, at the beginning of his tour, Sgt. Duerr made a memo book entry showing that he conducted a BWC inspection (BR 11). He did not note any BWC issues.

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

The Command Log for May 23, 2019 (BR 11) and May 24, 2019 (BR 12) did not have any entries regarding BWC issues or malfunctions. It did not indicate that PO Hoxha went to the 41st Precinct stationhouse, or that PO Vargas and PO Hoxha separated at any point. At 1:02 a.m. the desk officer, Lieutenant Mo Tsang of the 42nd Precinct, wrote that all BWCs were secured and accounted for.

The 42nd Precinct could not locate an Unmarked Vehicle Utilization Log for the vehicle PO Hoxha and PO Vargas used on this date (BR 13).

The surveillance footage of this incident showed that PO Hoxha conducted this vehicle stop with another officer who had been riding in a vehicle before her stop. The footage did not show a second officer arriving in a separate unmarked vehicle, as she stated. § 87(2)(g)

Members of service must sign into Department computer systems using their own confidential password. Officers must sign off the system upon completion of its use or whenever able to safeguard, even for a brief period of time. Officers signed on to a Department computer system will be held strictly accountable for all entries on that system during the period they are signed on. NYPD Patrol Guide Procedure 219-14 (BR 20).

PO Hoxha and PO Vargas both testified that PO Hoxha was alone when she conducted this stop, on the way to repair her BWC. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Hoxha has been a member-of-service for six years and has been a subject of twenty-nine allegations in nine cases, three of which were substantiated.
 - Case #201806458 involved substantiated allegations of frisk, question, and search (of person). The Board recommended that PO Hoxha receive Formalized Training. The NYPD imposed Formalized Training.
- PO Vargas has been a member-of-service for five years and has been a subject of fifteen allegations on ten cases, one of which was substantiated.
 - Case #201506210 involved a substantiated allegation of premises entered and/or searched. The Board recommended that he receive charges. He was found guilty at APU trial. The NYPD imposed a discipline of three forfeited vacation days.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to OCA, § 87(2)(b) has no history of convictions in NYC (BR 22).

- As of January 27, 2020, the NYC Comptroller's Office has no record of a Notice of Claim being filed regarding this complaint (BR 23).

Squad 6

Investigator: Mac Muir Supervising Investigator Mac Muir July 30, 2020
Signature Print Title & Name Date

Squad Leader: Jessica Peña IM Jessica Peña 7/6/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date